IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

Case No. 77-1044

CARAVEL OFFICE BUILDING COMPANY,
A District of Columbia limited partnership, and
CLIFFORD J. HYNNING,
Managing General Partner of said limited partnership,
Petitioners,

v.

BOGLEY HARTING MAHONEY &
LEBLING, INC., A Maryland corporation,

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

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Petitioners, Caravel Office Building Company (hereinafter called the "D.C. Partnership Debtor") and Clifford J. Hynning (hereinafter called the "Partner") pray that a writ of certiorari issue to the Supreme Court for the State of Virginia.

OPINIONS BELOW

The Circuit Judges for Arlington County, Virginia, issued various orders on pleas and motions (pp. 15a-16a, 8a-9a) and a typewritten letter-opinion, dated December 23, 1976, reprinted at pp. 5a-7a; the trial court's judgment order dated

January 14, 1977, reprinted on pp. 5a-7a, and the memorandum judgment of the Supreme Court of Virginia, dated October 25, 1976, reprinted at p. 4a.

JURISDICTION

The Court's jurisdiction is invoked under 28 USC 1257(3).

QUESTIONS PRESENTED

1. Is the due process clause of the 14th Amendment to the Constitution of the United States violated if a forum state, without consent,

a. exercises jurisdiction over a non-resident limited partnership without even any "minimal contacts" with the forum state?

b. serves process on a non-resident partnership, without even any "minimal contacts" with the forum state, at the personal residence (non-business) of one of the partners in the forum state?

2. Where a transaction is admittedly governed by extra-state law on usury, by the settled rules of the conflict of laws, did the forum state violate the full-faith-and-credit clause of Article IV, §1 of the Constitution of the United States by refusing to apply such extra-state law in fact, while formally professing to do so?

CONSTITUTIONAL PROVISIONS AND STATE STATUTES INVOLVED

1. Article IV, §1 of the Constitution of the United States which reads in part, as follows:

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other state . . ."

2. The 14th Amendment, §1 to the Constitution of the United States, which reads, in part as follows:

> ". . . [nor] shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

See Appendix, p. , for excerpts from the District of Columbia Code.

STATEMENT OF THE CASE

This case comes to the Supreme Court on a *per curiam* affirmance by the Virginia Supreme Court of the orders and judgment of the Circuit Court of Arlington County (pp. 5a-7a). A complaint was filed on February 18, 1976, Chancery No. 26191, by a Maryland corporation (hereinafter called the "Maryland Creditor") on a note against a non-resident limited partnership. The complaint also named as defendants a general partner residing in Arlington, Virginia, and another general partner residing in Baltimore, Maryland. The sole maker and obligor of the note (without any endorsement guaranty) was the D.C. partnership debtor itself. The note recited on its face that it "was delivered in the District of Columbia by a limited partnership organized and doing business in the District of Columbia, is secured by real property located in the District of Columbia, and is to be governed by the laws of the District of Columbia" (p. 17a).

Service of process was made by taping two copies of the complaint on the door of the personal home residence of

a partner in Virginia (p. 18a). One copy of the complaint was marked for "The Caravel Office Building Co., a District of Columbia partnership, Serve Clifford J. Hynning, General Partner, 3700 Military Road, Arlington, Virginia." Another copy of the complaint was named "Clifford J. Hynning at 3700 Military Road, Arlington, Virginia." Service of process was never effected on another general partner, Carol H. Smith, in Baltimore, Maryland, obviously beyond the reach of the long-arm statutes of Virginia.

The D.C. debtor partnership was exclusively engaged in a peculiarly localized business in the District of Columbia, i.e., the ownership and management of an office building, and has throughout its existence had no offices at any address in Virginia, has conducted no business or other activities there and has no other contacts with Virginia save for the fact that one of its partners personally has lived there. That partner has carried on no business of any kind whatsoever on behalf of the partnership in Virginia. He is a member of the bars of Illinois and D.C., but is not a member of the bar of Virginia. The happenstance of his home in Virginia was the sole reason the partner was served in this cause.

Petitioners appeared specially to file a motion to quash service (p. 19a) and a plea in abatement (p. 23a) with attached affidavit (p. 21a). Petitioners prayed that the service of process be quashed and that the Virginia Court dismiss the action as well on grounds of forum non-conveniens, subject to the condition volunteered by the petitioners in their pleas that the partnership debtor and partner accept service in the District of Columbia. The pleas were summarily overruled by Judge Russell on April 14, 1976 (p. 15a). At a subsequent hearing Judge Russell ruled that the defense of the statute of limitations be stricken from the answer (p. 8a).

Trial without jury was held on October 13, 1976 before Judge William L. Winston.

The Maryland creditor had initially offered the D.C. debtor its mortgage banking services after the Maryland creditor learned that one of the largest insurance companies in the United States had rejected the D.C. partnership debtor's loan application on the ground that the size of the D.C. partnership debtor's land was insufficient to support an economical and modern office building. The Maryland creditor insisted that its economic analyses showed that the small site was economically viable and that it was confident of its judgment that the Maryland creditor could obtain the necessary financing, and also wanted to use part of its resultant brokerage fees to acquire an equity participation in the project. As it was, the building income never met costs and expenses, the Maryland creditor dropped its option for an equity participation, and the loans went into default. See Trial transcript 68-77.

This action arose out of a loan made by the Maryland creditor, a mortgage banker licensed to do a mortgage banking business in the District of Columbia, to the D.C. partnership debtor in the principal amount of $93,227.21, for the completion of construction of an office building in the District of Columbia. The Maryland creditor's relationship to the D.C. partnership debtor in March, 1968, involved five separate but simultaneous transactions for which the Maryland creditor was paid up-front fees and received repayment of prior loans out of the land proceeds (p. 27a) follows:

1. The Maryland creditor brokered a sale-leaseback of land from the D.C. partnership debtor to the insurance company, for a fee of $11,700.

2. The Maryland creditor brokered a permanent loan from the insurance company, for a fee of $9,220.

3. The Maryland creditor brokered a bank construction loan for a fee of $9,220.

4. The Maryland creditor itself made a "gap" loan to the partnership debtor for an up-front fee of $9,000, in addition to the 8% interest specified in the gap loan note.

5. The Maryland creditor was repaid out of the proceeds of the sale-leaseback prior loans secured on the said land aggregating approximately $65,740. See Defendants' Exhibit 2 in the Trial record.

The fourth financial transaction was aptly characterized by the Maryland creditor itself as a gap loan – to fill the gap between the funds needed for the completion of the building and the outstanding loan commitments. If this gap were not filled, the Maryland creditor could lose brokerage fees on the various transactions and would defer loan repayments to it, in the aggregate amount of approximately $104,880.

The Maryland creditor issued a gap loan commitment directly to the partnership debtor that the creditor would loan an amount up to $100,000, providing said funds "were required and used for the purpose of paying for tenant finishing" in the office building. This commitment ran directly from the Maryland creditor as lender to the partnership debtor as borrower; it involved no third party, as in the case of the construction loan (bank), the permanent loan (insurance company), and the sale-leaseback agreement (insurance company).

The Maryland creditor demanded an effective interest rate of 12% on the gap loan note, the same 12% interest charged in two prior, but then still outstanding, loans made by the same Maryland creditor on the same site to the partner. The loan was structured to give the Maryland creditor the 12% return while a lawful rate of interest of 8% under D.C.

law would appear on the face of the note. See Trial transcript 97, 105, 111. The note in question was originally due and payable December 31, 1970, but on January 29, 1971, an extension agreement was executed, whereby the note was payable on demand. Demand for payment in full was made in 1972.

The trial court:

1. Refused to quash service of process on defendant described as

> "The Caravel Office Building Co.,
> a District of Columbia partnership
> Serve: Clifford J. Hynning, General Partner
> 3700 Military Road
> Arlington, Virginia"
>
> CLIFFORD J. HYNNING, et al
> 3700 North Military Road
> Arlington, Va. (p. 18a).

2. Overruled (p. 15a) the motion for dismissal on the grounds of forum non-conveniens on the condition volunteered by the petitioners they accept service in the District of Columbia, as specified in their pleas and motion papers (pp. 19a-20a, 23a-26a);

3. Struck from the answer the defense of the District of Columbia statute of limitations (p. 8a);

4. Found that the relationship of the note transaction to the District of Columbia "is a reasonable one and the contracting parties may agree upon the applicable law" (p. 10a);

5. Ruled that "Under the law of the District of Columbia, a front-end payment made to the lender or his agent is considered to be interest" (p. 11a);

6. Characterized the District of Columbia's usury statute as "broad, expansive and borrower oriented" (p. 11a);

7. Ruled that cases in the District of Columbia have "*expressed no doubt* [emphasis added] that 'a commission or bonus paid to the same person who is entitled to interest is to be considered as additional interest' " (pp. 11a-12a);

8. Obfuscated the $9,000 fee by holding that such fee was part of a total financing package which included the permanent financing, the construction loan, the sale-leaseback and the commitment for the gap loan" (p. 12a), without stating anywhere in the opinion that the Maryland creditor's own contemporaneous interoffice memorandum showed separate dollar invoicing for each of the components of the financing package – *op. cit.*, pp. 5-6, citing Exhibit D reprinted at p. 27a.

9. Postulated scienter in a usury case by requiring evidence of "corrupt intent to conceal it under an ostensibly lawful contract or transaction. 91 CJS, Usury §114" (p. 13a);

10. Held that "The evidence in this case is insufficient to lead the court to conclude that this transaction which was readily susceptible to a valid and legal construction, was in fact usurious" (p. 14a).

By judgment order dated January 14, 1977, the Virginia court granted judgment in favor of the creditor in the amount prayed for – $79,760.48 – with interest from July 14, 1972, and costs (p. 5a). Thereafter, the petitioners timely filed a notice of appeal, and a petition for a writ of error but this appeal was denied by the Supreme Court of Virginia on October 25, 1977.

REASONS FOR GRANTING THE WRIT

The arguments in support of this petition are limited to the Constitution of the United States under the due process clause of the 14th Amendment and under the full-faith-and-credit clause of Article IV, §1.

The case authorities on constitutional aspects of partnerships are admittedly sparse. But this sparseness is not because the issues are not important today. The very sparseness of the precedents is a measure of the importance of this case before this Court, for there is a widespread need to set forth clearly the basic requirements of the Constitution on extra-state litigation involving non-resident partnerships. These litigation problems are particularly troublesome in metropolitan areas on the verge of state lines, as here in the Washington metropolitan area, but they exist across the country. It is increasingly common for partnerships owning commercial real estate to have partners who reside in different states. A relatively recent statutory creation, the limited partnership has proven to have great practical utility in the ownership and development of real estate on a commercial scale throughout much of the United States today. These developments may be grossly distorted if not prejudiced or endangered by the kind of judicial process exhibited by the forum state in this cause.

The full-faith-and-credit argument also is of paramount importance to the modern commercial world where parties to a contract frequently endeavor to set forth in advance, through the exercise of what conflict of laws calls "party autonomy" in the choice of law, by specifying the law to govern future disputes. American Law Institute, Conflict of Laws, 2nd §187.

1. The forum state lacks constitutional power under the due process clause of the 14th Amendment to exercise jurisdiction over a non-resident limited partnership, exclusively engaged in a peculiarly localized business in another state, i.e., an office building, without having even any "minimal contacts" with the forum state.

At the very outset of the Virginia litigation the petitioners challenged the jurisdiction of Virginia over the non-resident limited partnership by filing a motion to quash service and a plea in abatement. The Virginia court summarily denied the motion and plea in abatement without any inquiry as to any "minimal contacts" of the non-resident partnership debtor to the forum, so long as the forum had under its territorial control the person of a Virginia resident who was a partner. The fact that this person merely resides in Virginia as the forum state and has conducted no partnership business whatever in Virginia and therefore cannot be said to be "found" in the forum state in any representative capacity on behalf of the D.C. partnership debtor should have been a matter of concern to Virginia as the forum state in this cause. Petitioners' argument was pressed on appeal under the "contact" ground.

This case is controlled by the rationale announced by this Court last June in *Shaffer v. Heitner,* ___ U.S. ___, 97 S.Ct. 2569 (1977), where a near-unanimous Court concluded (pp. 2584-85) "that all assertions of state court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny." This conclusion came after a detailed analysis of the development of case authorities, starting with *Pennoyer v. Neff,* 93 US 714 (1878), which arose prior to the 14th Amendment but was

decided afterwards, and the strong trend away from justifying state jurisdiction on the court's power over the person of the defendant or his property to the test of "minimal contacts" between the forum and the defendant and the litigation. The classic statements are *International Shoe Company v. State of Washington,* 326 US 310 (1945), *Hanson v. Denckla,* 357 US 237 (1958) and, most recently, *Shaffer.*

International Shoe laid down (p. 319) following test: "Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure. That clause does not contemplate that a state may make binding a judgment in personam against an individual or corporate defendant with which the state has no contacts, ties, or relations." *Hanson* illustrates a minimal requirement under the due process clause of the 14th Amendment, as follows:

"But it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts. Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States. However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the 'minimal contacts' with that State that are prerequisite to its exercise of power over him. . .

"The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself

of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." At pp. 250-53.

The rationale of *International Shoe* was fully endorsed by this Court in *Shaffer* and extended (p. 2580) against all assertions of state court jurisdiction over non-residents, individuals, corporations or other entities. It carefully noted (p. 2580) that *International Shoe* was not confined to a corporate defendant and, of course, *Shaffer* dealt particularly with individuals. In reviewing the trends since *Pennoyer*, *Shaffer* pointed out that the "relationship among defendants, the forum, and the litigation, rather than the mutually exclusive sovereignty of the states on which the rules of *Pennoyer* rest, became the central concern of the inquiry into the personal jurisdiction." *Shaffer* emphasized that (p. 2584) that " 'traditional notions of fair play and substantial justice' can be readily offended by the perpetuation of ancient forms that are no longer justified by the adoption of new procedures that are consistent with our basic constitutional heritage." The example of "an ancient form without substantial modern justification" in *Shaffer* was the ownership of property by the non-resident defendants in the forum state. Branding as a "fiction that an assertion of jurisdiction over property is anything but an assertion of jurisdiction over the owner of the property," *Shaffer* held the continued acceptance of that fiction and ancient form "would serve only to allow state court jurisdiction that is fundamentally unfair to the defendant." Thus *Shaffer* held that property owned in the forum state by non-resident individuals, wholly unrelated to the cause of action, was not a sufficient basis for state court jurisdiction in rem.

Applying *Shaffer* here, it would necessarily follow that the location within the forum state of the personal home

of a partner of a non-resident partnership engaged exclusively in a peculiarly localized business in another state does not furnish any basis for asserting state court jurisdiction over the limited partnership, whether on the basis of the property or the personal domicile of a partner not engaged in any partnership business or activities in the forum state.

There are no decisions of this Court expressly dealing with the jurisdiction of a forum state over a non-resident partnership. *Sugg v. Thornton*, 132 U.S. 524 (1889) dealt with the jurisdiction of the forum state (Texas) over a resident partnership (in Texas), but stressed the inability of the forum state to reach the personal assets of a non-resident partner who was not served within the forum state. A reasonable implication is that a non-resident partnership could probably not have been bound by the Texas judgment. There are a few state court decisions, collected in various annotations of ALR, holding that a non-resident partnership for purposes of jurisdiction is to be treated in substantially the same way as a non-resident corporation in applying the doctrine of "minimal contacts". Also see 2 Moore Federal Practice §4.25 and cases there cited. The Annotation in 10 ALR 2nd 200 supplies the answer why there are so few cases: "It is very rare that one finds a non-corporate business organization which crosses state lines."

It is undisputed on this record that the D.C. partnership debtor, who was the sole obligor under the note, had none of the constitutionally required "minimal contacts" with Virginia so that it could constitutionally assert jurisdiction. By denying the writ of error the Supreme Court of Virginia held that the personal residence of a general partner without any conduct of partnership business by such partner in Virginia in and of itself supplies the constitutionally neces-

sary "minimal contact" by the D.C. non-resident partnership debtor with Virginia so as to justify the jurisdiction of the Virginia court. Obviously, an office building located in the District of Columbia can hardly be said to cross the line into Virginia, absent proof of some activity or contact with Virginia (pp. 21a-22a). Here the affidavit supporting the motion to quash service and the plea in abatement set forth that there were no contacts whatsoever between the non-resident limited partnership and Virginia. The gross attempt by the Maryland creditor, by merely typing the name and address on the face of the complaint of the District of Columbia limited partnership at the personal residence of one of its partners in Virginia is shocking.

By no stretch of the imagination can a creditor by its own fiat assign an address to the D.C. non-resident partnership at the personal residence of one of the partners. In no way can that D.C. non-resident partnership be "found" at the personal address of a partner unless some partnership activity or business is transacted at such an address. This was recognized long ago by the American Law Institute, *Restatement of Judgments* where it said: "The mere fact that one of the partners or members of the association is found within the State is not a sufficient basis for exercising jurisdiction over the partnership or association." §24, at p. 115. Moreover, the summons was not delivered in person in the case of either the D.C. partnership debtor and the general partner, who was a resident of Virginia. The complaint and summons were taped on the front door of the personal residence of the general partner. This was hardly orderly service in itself under the law.*

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* Rule 4(d)(3) of the Federal Rules of Civil Procedure do not permit the service of process on a non-resident partnership by leaving process at a partner's "dwelling house or usual place of abode with some person of suitable age and discretion then residing there." That is only in the case of service on an individual. Quoted language is from Rule 4(d)(1) which so permits.

The Virginia court's uncritical acceptance of the bare-faced attempt of the Maryland creditor to plant the D.C. non-resident partnership in the Virginia home of a general partner, absent any "contact" whatsoever of the D.C. non-resident partnership with Virginia, is a gross transgression of the due process clause of the 14th Amendment. It necessarily follows that if the Virginia court had no jurisdiction over the D.C. non-resident limited partnership, which was the sole maker of the note sued upon, and cannot subject the D.C. non-resident partnership to liability thereunder. It further follows from the lack of constitutional jurisdiction over the D.C. non-resident partnership, the Virginia court cannot impose any partnership liability on the partner, who, by happenstance lives in Virginia and such living is the sole contact with the Virginia court. A partner is liable only as an incident of the partnership; and if the partnership is not liable, the partner is not liable. 60 Am. Jur. 2nd, Partnerships, §160.

Parenthetically, it was argued in the Virginia courts that by virtue of the choice-of-law provision on the face of the notice that the transaction was "to be governed by the law of the District of Columbia," meant that this included the whole law of the District of Columbia without exception. This would, of course, include the Federal Rules of Civil Procedure. The Virginia court said this was inconvenient, since it was not familiar with the law of procedure and remedies of the District of Columbia, and denied the effort on the part of the petitioners to have such law applied. As a non sequitur, the convenience of the court led to the inconvenience of the petitioners, whose motion

for dismissal on grounds of forum non-conveniens was denied. The convenience of the Virginia court became not merely the inconvenience of the petitioners but a denial of justice.

2. Virginia violated the full-faith-and-credit clause of Article IV, §1 of the United States Constitution when its courts, demonstrating full knowledge of the District of Columbia law on usury, which is admittedly the governing law in this case, nonetheless refused to apply such law on the ground that D.C. law was "borrower oriented", while formally profession to do so.

In their petition for a writ of error to the Supreme Court of Virginia, petitioners argued that the trial court had conspicuously failed to apply the law of the District of Columbia on usury and limitations of actions on a note made by a non-resident partner, who was the sole obligor under the note, and in accordance with the express terms of the note to be governed "by the laws of the District of Columbia."

The framers of the Constitution in constructing a new Federal government required that rules of private international law could not be wholly left to the States on a basis of comity, with the known possibilities of an overruling local policy of the lex fori. Library of Congress, Congressional Research Service. The *Constitution of the United States: Analysis and Interpretation* (1973), p. 74. Federalism required that the rules of private international law, or conflict of laws as it is more generally known in this country, should be placed on a higher plane of constitutional obligation than interstate comity. Thus was born Article IV, §1 of the Constitution.

The language of the Constitution on the full-faith-and-credit clause initially received a relatively absolutist interpretation in *Chicago and Alton Railway v. Wiggins Ferry Company*, 119 US 615 (1887), which held that the defendant in a transitory action was constitutionally entitled to have "the public acts of every state be given the same effect by the courts of another state that they have by law and useage at home." But this doctrine has met with substantial modification with the passage of time and growth of the nation and the requirements of our economy. The inflexible rule of *Alton* has given way in a series of cases involving torts, workmen's compensation, divorce-custody-support, insurance, etc. There have been very few cases involving commercial contracts. The leading case is *Alaska Packers Association v. Industrial Accident Commission of California*, 294 US 532 (1935), where Chief Justice Stone laid down the requirement of a balancing of the conflicting governmental interests of two or more states whose laws may collide in the resolution of litigation. The trend in *Alaska* was away from a "rigid and literal enforcement of the full faith and credit clause" (at p. 547) to the duty of this Court to

> "determine for itself the extent to which the statute of one state may qualify or deny rights asserted under the statute of another. . . . The necessity is not any the less whether the statute and policy of the forum is set up as a defense to a suit brought under the foreign statute or the foreign statute is set up as a defense to a suit or proceeding under the local statute. In either case, the conflict is the same. In each, rights claimed under one statute prevail only by denying effect to the other. In both the conflict is to be resolved, not by giving automatic effect to the full faith and credit clause, compelling the courts of each state to subordinate its own stat-

utes to those of the other, but by appraising the governmental interests of each jurisdiction, and turning the scale of decision according to their weight."

The critical question under the full-faith-and-credit clause is what was the governmental interest of Virginia in this suit by a Maryland corporation against a D.C. limited partnership on a note admittedly governed by the laws of the District of Columbia? No state had any significant contact other than District of Columbia. The only connection with Virginia is that one of the partners personally resides in Virginia. This can be no predicate for a governmental interest by Virginia in the obligations of a D.C. partnership debtor to a Maryland corporation. Traditionally, the governmental interest that arises in conflict cases under the full-faith-and-credit clause is the concern of the forum state to protect its own residents from overreaching claims by a foreign corporation. Clearly there is no governmental interest in Virginia to protect the interests of a Maryland corporation at the expense of a Virginia resident that would override the clearly evidenced governmental interests of the District of Columbia.

The D.C. interests and contacts are:

1. The creditor is a Maryland corporation, licensed to do a mortgage banking business in the District of Columbia, which is suing on a loan it made in the District of Columbia evidenced by a note delivered in the District of Columbia.

2. The maker of the note is a D.C. limited partnership exclusively engaged in a peculiarly localized business in D.C., namely, the ownership and management of an office building in the District of Columbia.

3. The note was secured on real estate located in the District of Columbia owned by the D.C. partnership in its own name.

4. The only business offices of the D.C. limited partnership are located in the District of Columbia.

5. The note contained on its face an express stipulation that it is "to be governed by the laws of the District of Columbia."

6. The general partner who manages the affairs of the D.C. limited partnership has his only offices in the District of Columbia where the partnership records are kept and the business of the partnership is transacted.

7. The only connection with Virginia is that the general partner of the D.C. limited partnership maintains his personal residence in Arlington, Virginia. He conducts no partnership business whatsoever in Virginia..

8. The D.C. limited partnership has never conducted any business in Virginia.

The balancing of the conflicting governmental interests of Virginia and the District of Columbia is very simple on the facts of records. There is no governmental interest of Virginia in this case under the rule of *Alaska Packers*.

It follows, therefore, that Virginia was constitutionally compelled to give full faith and credit to the D.C. law on usury and limitations of actions. This the Virginia court did not do. The Virginia court clearly knew what it was doing for it said there was "no doubt" under D.C. law that usury arose where anything of value was paid in addition to the rate of interest specified on the face of the note. Here that payment was $9,000. There can be "no doubt" that under D.C. law there

was usury in this case. Similarly, there is "no doubt" that the Virginia court refused in fact to apply such D.C. law. The only reason given is the Virginia court's characterization of D.C. law as "broad, expansive and borrower oriented". The Virginia court postulated proof of scienter or "corrupt intent" by the lender. There is no requirement of "corrupt intent" in usury cases under D.C. law, as Virginia "no doubt" knew. It is passing strange that this cause should be decided on "corrupt intent."

The D.C. laws on the limitations of actions were also held inapplicable by the Virginia court. This was contrary, of course, to both the chosen law of the parties as stated on the face of the note and contrary to the requirements of the full-faith-and-credit clause, in violation of the Constitution.

CONCLUSION

In Virginia the denial of a petition for writ of certiorari to the Supreme Court of Virginia, unlike a denial of a petition for certiorari to this Court, has the legal effect of affirming the judgment of the trial court. Consequently, the Virginia Supreme Court has decided:

(1) The personal residence of a general partner may, in of itself, provide the requisite constitutionally "minimal contact" to enable Virginia to exercise personal jurisdiction over a D.C. non-resident partnership not having even any "minimal contacts" in Virginia;

(2) That in furtherance of (1) above, the D.C. non-resident partnership may be brought into the Virginia court by taping process to the front door of the personal (non-business) residence of a general partner;

(3) That a choice-of-law provision in the agreed contract of the parties, which is unqualified in its terms, may be judicially modified by a Virginia court to include only "substantive law" of the District of Columbia;

(4) That a Virginia trial court may refuse to follow District of Columbia law admittedly applicable under the settled rules of conflict of laws on the ground that District of Columbia law is "borrower oriented"; and

(5) It is not necessary for a Virginia court to have found any "governmental interests" on the part of Virginia in order to refuse the applicable D.C. law.

It is an understatement to say such holdings as the above have a broad impact on commercial transactions in the United States. Such rulings are particularly crucial for commercial transactions when a court refuses to differentiate between the business contacts of the commercial entity in the state and the personal contacts arising from the home residence of one of the principals of the commercial entity. Commercial transactions are predicated upon the premise that, at their inception, the parties to the contract should be able to evaluate intelligently their rights, duties, liabilities and risks so that they may make an informed judgment as to whether to embark on a transaction. The decision of the Virginia Supreme Court in this cause destroys that essential stability and substitutes therefor each individual trial judge's subjective evaluation of whether, in the absence of any business contacts in the state, he can find some basis on which to exercise impersonam jurisdiction over a non-resident business entity.

The record of the constitutional transgressions of Virginia, contrary to this Court's decisions in *International Shoe*, *Shaffer* and *Alaska Packers*, cries for the corrective intervention

of this Court in this cause in the name of the Constitution itself.

For the foregoing reasons, it is respectfully submitted that a writ of certiorari issue to the Supreme Court of Virginia.

Respectfully submitted,

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APPENDIX A

DISTRICT OF COLUMBIA CODE

§28:1-105. Territorial application of this subtitle; parties' power to choose applicable law

(1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to the District and also to a state or nation the parties may agree that the law either of the District or of such state or nation shall govern their rights and duties. Failing such agreement this sub subtitle applies to transactions bearing an appropriate relation to the District.

* * *

§28-3301. Rate of interest expressed in contract

The parties to an instrument in writing for the payment of money at a future time may contract therein for the payment of interest on the principal amount thereof at any rate not exceeding 8 percent per annum. Aug. 30, 1964, Pub.L. 88-509, §1, 78 Stat. 675, eff. Jan. 1, 1965.

* * *

§28-3303. Usury defined

If a person or corporation contracts in the District,

(1) verbally, to pay a greater rate of interest than 6 percent per annum, or

(2) in writing, to pay a greater rate than 8 percent per annum, the creditor shall forfeit the whole of the interest so contracted to be received.

This section does not affect sections 26-601 to 26-611. Aug. 30, 1964, Pub.L. 88-509, §1, 78 Stat. 675, eff. Jan. 1, 1965.

ANNOTATION TO §28-3303

Various devices have been used to cloak usurious transactions.[73] Whatever the form of the contract, the court will look into all the circumstances of the case in determining whether or not the transaction is a mere disguise or contrivance for the purpose of securing usurious interest.[74] If the facts show it to be a contract to secure illegal interest, it will be so construed.[75]

Money exacted by the lender from the borrower for the use of money in excess of the legal rate allowed is usury,[76] under whatever name or pretense the exaction, extension, or forbearance may be designated.[77] Accordingly, this section may be violated by deducting a bonus or commission in advance,[78] as well as by any other means by which mo money in excess of the legal rate is exacted.[79] However, it is the general rule that a commission paid by a borrower to a loan broker for obtaining a loan from a third person does not constitute usury, unless the broker is acting as the agent of the lender.[79a]

* * *

§12-301. Limitation of time for bringing actions

Except as otherwise specifically provided by law, actions for the following purposes may not be brought after the expiration of the period specified below from the time the right to maintain the action accrues:

. . .

(7) on a simple contract, express or implied—3 years;

(8) for which a limitation is not otherwise specially prescribed—3 years.

* * *

§28:3-122. Accrual of cause of action

(1) A cause of action against a maker or an acceptor accrues . . .

(b) in the case of a demand instrument upon its date or or, if no date is stated, on the date of issue . . .

* * *

VIRGINIA:

IN THE SUPREME COURT OF VIRGINIA HELD AT SUPREME COURT BUILDING IN THE CITY OF RICHMOND ON TUESDAY THE 25TH DAY OF OCTOBER, 1977.

The petition of The Caravel Office Building Company, a District of Columbia partnership, and Clifford J. Hynning for a writ of error and supersedeas to a judgment rendered by the Circuit Court of Arlington County on the 14th day of January, 1977, in a certain proceeding then therein depending, wherein Bogley, Harting, Mahoney & Lebling, Inc., was plaintiff and the petitioners and another were defendants, having been maturely considered and a transcript of the record of the judgment aforesaid seen and inspected, the court being of opinion that there is no reversible error in the judgment complained of, doth reject said petition, and refuse said writ of error and supersedeas, the effect of which is to affirm the judgment of the said circuit court.

Record No. 770632

A Copy,

Teste:

Howard G. Turner, Clerk

By: /s/ Richard R. [Illegible]
Deputy Clerk

VIRGINIA

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

BOGLEY, HARTING, MAHONEY & LEBLING, INC., A Maryland Corporation, Complainant	)	
v.	)	IN CHANCERY NO. 26191
THE CARAVEL OFFICE BUILDING COMPANY, A District of Columbia Partnership	)	AT LAW NO. 18633
and	)	
CLIFFORD J. HYNNING and CAROL H. SMITH, Defendants	)	

JUDGMENT ORDER

THIS MATTER CAME ON TO BE HEARD *ore tenus* upon the pleadings formerly filed herein; upon the witnesses presented, the evidence adduced by the parties hereto and the authorities cited by counsel on October 13, 1976; upon the Memoranda of Law filed by counsel for the respective parties and the argument of said counsel on November 3, 1976; upon the letter opinion of the Court dated December 23, 1976, and upon consideration of all of the foregoing;

IT APPEARING TO THE COURT that the Complainant is entitled to judgment as sued for in the Motion for Judgment; it is therefore

ADJUDGED and ORDERED that the Complainant, BOGLEY, HARTING, MAHONEY & LEBLING, INC., be, and

it hereby is, awarded a judgment against the Defendants, THE CARAVEL OFFICE BUILDING COMPANY, a District of Columbia partnership, and CLIFFORD J. HYNNING, in the principal amount of SEVENTY-NINE THOUSAND SEVENTY-SIX AND 48/100 DOLLARS, ($79,076.48), with interest at the rate of eight per cent (8%) per annum from the 14th day of July, 1972 and Court costs.

AND since the Defendants, THE CARAVEL OFFICE BUILDING COMPANY, a District of Columbia partnership and CLIFFORD J. HYNNING, have indicated their intention to apply to the Supreme Court of Virginia for a Writ of Error and Supersedeas to the judgment of this Court; and upon the Defendants or someone for them giving or filing a bond with approved corporate surety in this Court within twenty-one (21) days from this date in the penalty of TEN THOUSAND AND 00/100 DOLLARS, ($10,000.00). Said bond is conditioned according to law; it is further

ORDERED that the execution of the judgment hereinabove rendered be, and the same hereby is, suspended for a period of four months from this date; and, if the Defendants duly file a Petition for a Writ of Error in the Supreme Court of Virginia, execution on the judgment is suspended until the Supreme Court of Virginia has acted upon said Petition; and if a Writ of Error is granted in this case it is ORDERED that execution on the judgment be suspended until an opinion has been rendered by said Supreme Court of Virginia;

IT IS further ORDERED that the Clerk of the Court forward forthwith a certified copy of this Order to all counsel and the Clerk of the Court is further ORDERED to record this judgment on the judgment lien docket in the Clerk's office in Arlington County.

ENTERED this 14th day of January, 1977.

/s/ William L. Winston
Judge

I ASK FOR THIS:

GARNETT & KOSTIK

By: /s/ Griffin T. Garnett, III
Griffin T. Garnett, III
Counsel for Complainant

SEEN, OBJECTED TO and EXCEPTION NOTED:

/s/ Peter J. Stackhouse
Peter J. Stackhouse
Counsel for Defendants

A copy
Teste: David A. Bell, Clerk

VIRGINIA

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

BOGLEY, HARTING, MAHONEY & LEBLING, INC., *Complainant*	*	
v.	*	IN CHANCERY NO. 26191
THE CARAVEL OFFICE BUILDING COMPANY, et al, *Defendants*	*	AT LAW NO. 18633

ORDER

THIS MATTER CAME ON TO BE HEARD upon the Defendants' plea to the Statute of Limitations; upon the evidence adduced, the authorities cited and the argument of counsel; and

IT APPEARING TO THE COURT that in matters of remedies and procedure in this cause the law of the Commonwealth of Virginia should govern; and

IT FURTHER APPEARING TO THE COURT that the Defendants' plea to the Statute of Limitations should be overruled;

IT IS therefore ADJUDGED and ORDERED that the Defendants' plea to the Statute of Limitations be, and hereby is, overruled and this cause is continued to the 13th day of October, 1976 for trial.

ENTERED this 18th day of October, 1976.

/s/ CHARLES S. RUSSELL
JUDGE

I ASK FOR THIS:

/s/ Griffin T. Garnett, III
Griffin T. Garnett, III
Counsel for Plaintiff

SEEN, OBJECTED TO and EXCEPTION NOTED:

/s/ PETER J. STACKHOUSE
Clifford J. Hynning
Counsel for Defendant and
appearing *pro se*

* * *

CIRCUIT COURT OF ARLINGTON COUNTY
VIRGINIA

December 23, 1976

Griffin T. Garnett, III, Esquire
Garnett & Kostik
2000 N. 16th Street
Arlington, Virginia 22216

Peter K. Stackhouse, Esquire
Tolbert, Smith, FitzGerald
and Ramsey
2300 South Ninth Street
Arlington, Virginia 22204

Re: At Law No. 18633, In Chancert No. 26191
Bogley, Harting, Mahoney & Liebling, Inc. v.
The Caravel Office Building Co., et al.

Gentlemen:

This is an action on a promissory note where the defense is usury.

There are two preliminary questions for decision prior to reaching the principal question. The first question is whether the law of the District of Columbia or the law of this jurisdiction should apply. The note itself states that it is to be governed by the laws of the District of Columbia and recites as its reasons that it was delivered there by a partnership organized and existing under the laws of that jurisdiction and that it is secured by real property located in the District of Columbia. Under these circumstances the relationship which the transaction bears to the District of Columbia is a reasonable one and the contracting parties may agree upon the applicable law. Sec. 8.1-105, *Code of Virginia.*

The second preliminary question is whether parole evidence is admissible where the document upon which the action is based is claimed to be usurious. As is the case where illegality or fraud is claimed, the evidence is admissible. *Houghton v. Burden,* 228 U.S. 161 (1913), *Richeson v. Wood,* 158 Va. 269 (1932).

The plaintiff, engaged in the mortgage brokerage business, entered into dealings with the defendants Caravel Office Building Company (a partnership) and Clifford J. Hynning. In connection with that the plaintiff (Bogley) earned a finder's fee for obtaining the Sun Life permanent loan, a fee for obtaining the construction loan with National Savings & Trust, a brokerage commission for arranging a sale-leaseback agreement, and a fee in connection with a gap loan. This last-mentioned loan was required by the construction lender and the contractor because of what they considered to be a shortage of dollars in the project. In that connection Bogley issued a standby commitment (Plaintiff's Exhibit No. 9) and received pursuant thereto a fee of $9,000.00. It is the receipt of this sum which the defendants say makes the note in suit (Plaintiff's Exhibit No. 1) usurious. That note bore the legal rate of interest, eight percent.

Under the law of the District of Columbia, a front-end payment made to the lender or to his agent is considered to be interest. *Searl v. Earll,* 221 F.2d 24 (D.C. Cir. 1954). The payment of a bonus to the lender had earlier been held to be interest. *Bowen v. Mt. Vernon Savings Bank,* 105 F.2d 796) (D.C. Cir. 1939). The District of Columbia's usury statute is considered to be broad, expansive and borrower oriented. *Hill v. Hawes,* 144 F.2d 511 (D.C. Cir. 1944). Cases in the District of Columbia have expressed no doubt that "a commission or bonus paid to the same person who is entitled to interest is to be considered as

additional interest." *Industrial Bank of Washington v. Page,* 249 F.2d 938 (D.C. Cir. 1957).

From these decisions it would appear that in the absence of anything else the payment of the commission to the lender makes the transaction usurious. If that is the case the law of the District of Columbia would apply the fee or commission to principal and would also allocate all payments on the note to the curtail of principal and deny interest.

To determine whether a transaction is usurious or not, resort may be had to the intention of the parties. It was for this reason that the parole evidence was admitted in the case. The testimony of the executive vice president of Bogley, Joseph J. Mahoney, Jr., was that the $9,000.00 fee was a part of a total financing package which included the permanent financing, the construction loan, the sale-leaseback and the commitment for the gap loan. He testified that it was not a loan fee but a commitment fee under which Bogley might either place the loan or fund it. Further he testified that although Bogley turned out to be the lender, it was not known at the time that that would be the case. Testimony revealed that efforts were made by Bogley to place the gap loan with various lenders as well as with a substantial material supplier before it became necessary for Bogley to fund it. The necessity for the gap loan resulted from the substantial holdbacks experienced under the construction loan.

A defendant, Clifford J. Hynning testified concerning a conversation had with Cross, a representative of Bogley concerning the standby commitment. He said there was no discussion of third party financing, that Bogley was to make the gap loan, and that they discussed an effective yield of twelve percent to Bogley for the loan. He further said

that during the conference with Cross there were conferences with Mahoney in an adjacent office about the yield. Mahoney denied any discussion regarding a twelve percent yield on the gap loan.

It should be noted that the date of the standby commitment was January 22, 1969. The note was dated February 28, 1969, but was not funded until late 1970 and 1971. Clearly under the commitment Bogley could make the loan, but the commitment did not require that they make it. The $9,000.00 fee paid under commitment was in no sense contingent. It was payable when the commitment was accepted regardless of who made the loan.

It is a general principle that where a contract is fairly open to two constructions, by one of which it would be lawful and the other unlawful, the former will be adopted. *17 Am.Jur.2d, Contracts,* §254; see also *17A CJS, Contracts,* §318; *Great Northern Ry Co. v. Delmar Co.* 51 S.Ct. 579 (1931); *Ottenberg v. Ottenberg,* 194 Fed. Supp. 98 (D.C. 1961).

If two reasonable constructions are possible by one of which the contract will be legal and valid, while by the other it will be usurious and unlawful, the court will always adopt the former. *91 CJS, Usury,* §11; *In re Zemansky,* 39 Fed. Supp. (D.C. Calif. 1941); *In re Richards,* 272 Fed. Supp. (D.C. Maine 1967); *Commercial Discount Company v. Rutledge,* 297 F.2d 370 (10th Cir. 1961).

Usury will only be presumed when the transaction is usurious on its face. If the contract appears fair on its face then it is presumed to be in good faith. The party attacking it has the burden of proving usury by extraneous evidence showing the corrupt intent to conceal it under an ostensibly lawful contract or transaction. *91 CJS, Usury,* §114.

The evidence in this case is insufficient to lead the court to conclude that this transaction which was readily susceptible to a valid and legal construction, was in fact usurious. It was treated by all the parties to it as valid and legal for many years. It was only in the late pleading stage of this case that the defense of usury was raised.

Counsel for the plaintiff should prepare the order awarding judgment to the plaintiff for the principal, interest and costs. No reference is made in the note to attorney's fees, although they are referred to in the deed of trust. Although a literal interpretation of the language in the deed of trust might permit the assessment of fees, the omission of them from the note is conclusive and they are denied. When the order has been endorsed, present it for entry.

Very truly yours,

/s/ William L. Winston
William L. Winston
Judge

WLW:kw

* * *

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

[Caption omitted in printing]

ORDER

THIS MATTER CAME ON TO BE HEARD upon the Defendant's, THE CARAVEL OFFICE BUILDING COMPANY, Motion to Quash and upon the Defendants', THE CARAVEL OFFICE BUILDING COMPANY and CLIFFORD J. HYNNING, Plea in Abatement or in the Alternative a Motion to Dismiss, and was argued by counsel; and,

IT APPEARING TO THE COURT that said Motions should be denied, it is, therefore ORDERED that the Motion to Quash of the Defendant, THE CARAVEL OFFICE BUILDING COMPANY, and the Plea in Abatement or in the Alternative a Motion to Dismiss of the Defendants, THE CARAVEL OFFICE BUILDING COMPANY and CLIFFORD J. HYNNING, be, and the same hereby are, denied; and,

IT IS FURTHER ORDERED that this matter be transferred to the law side of this Court; and,

THIS MATTER FURTHER CAME ON TO BE HEARD upon the Defendants First Defense in their Answer, which is hereby treated as a Demurrer; and,

IT APPEARING TO THE COURT that said First Defense should be overruled, it is, therefore, ORDERED that the First Defense of the Answer of the Defendants, THE CARAVEL OFFICE BUILDING COMPANY and CLIFFORD J. HYNNING, be, and it hereby is, overruled.

AND THIS CAUSE IS CONTINUED.

ENTERED this 14th day of April, 1976.

/s/ CHARLES S. RUSSELL
JUDGE

I ASK FOR THIS:

GARNETT & KOSTIK

By: /s/ Griffin T. Garnett III
Griffin T. Garnett, III
Counsel for Complainant

SEEN, OBJECTED TO AND EXCEPTION NOTED:

By: /s/ CLIFFORD J. HYNNING
Clifford J. Hynning, pro se and
as Managing General Partner of
THE CARAVEL OFFICE BUILDING COMPANY

* * *

EXHIBIT A

PROMISSORY NOTE

$100,000.00 Washington, D. C.
February 28, 1969

On December 31, 1970 the undersigned promises to pay to the order of BOGLEY, HARTING, MAHONEY & LEBLING, INC. ONE HUNDRED THOUSAND DOLLARS ($100,000.00) or so much thereof as may from time to time be advanced for value received at 7000 Wisconsin Avenue, Chevy Chase, Maryland, with interest from date of each advance at eight per centum per annum, until paid, payable monthly and at maturity; each installment of interest to bear interest after maturity, if not then paid, at the rate aforesaid. Said payments due on the first of each and every month.

AND it is expressly agreed that if default be made in the payment of any one of the aforesaid installments when and as the same shall become due and payable, then and in that event the unpaid balance of the aforesaid principal sum shall at the option of the holder hereof, at once become and be due and payable, anything hereinabove contained to the contrary notwithstanding.

This Promissory Note has been delivered in the District of Columbia by a limited partnership organized and doing business in the District of Columbia, is secured by real property located in the District of Columbia, and is to be governed by the laws of the District of Columbia.

THE CARAVEL OFFICE BUILDING COMPANY

Signed for Identification BY: /s/ Carol H. Smith
General Partner

_____ /s/ _____
Trustee

TO: JOSEPH J. MAHONEY, JR. and CARVILLE J. CROSS
CONVEYING: Leasehold interest and estate in and to Lots 60, 61 and 62 in G.N. Hopkins and others [illegible] of Lots in Square 111

COMMONWEALTH OF VIRGINIA

IN THE CIRCUIT COURT OF THE COUNTY OF ARLINGTON

BOGLEY, HARTING, MAHONEY & LEBLING, INC.,
a Maryland Corporation,
Complainant

versus SUBPOENA IN CHANCERY
No. 26191

THE CARAVEL OFFICE BUILDING COMPANY,
a District of Columbia partnership

and

CLIFFORD J. HYNNING, et al
3700 North Military Road
Arlington, Va.

Serve: Clifford J. Hynning, General Partner
3700 North Military Road
Arlington, Va.,
Defendants

The party upon whom this writ and the attached paper are served is hereby notified that unless within twenty-one (21) days after such service, response is made by filing in the Clerk's Office of this court a pleading in writing, in proper legal form, the allegations and charges may be taken as admitted and the court may enter a decree against such party, without further notice, either by default or after hearing evidence.

Appearance in person is not required by this subpoena.

Done in the name of the Commonwealth of Virginia, this 18 day of February, 1976.

JOSEPH C. GWALTNEY, CLERK

By: /s/ Katherine K. Oakwell,
DEPUTY CLERK

GARNETT & KOSTIK, p. q.
2000 N. 16th St.
Arlington, VA

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

BOGLEY, HARTING, MAHONEY & & LEBLING, INC., A Maryland Corporation, 7000 Wisconsin Avenue, Chevy Chase, Maryland,
Complainant,

v.

THE CARAVEL OFFICE BUILDING COMPANY, A District of Columbia partnership, 1555 Connecticut Avenue, N.W. Washington, D.C. 20036

and

CLIFFORD J. HYNNING, 3700 North Military Road, Arlington, Virginia

and

CAROL H. SMITH, 1034 North Calvert Street, Baltimore, Maryland.
Defendants.

In Chancery No. 26191

MOTION TO QUASH SERVICE ON CARAVEL OFFICE BUILDING COMPANY, A DISTRICT OF COLUMBIA PARTNERSHIP

Comes now the defendant Caravel Office Building Company (hereinafter called "Caravel"), a limited partnership organized under the laws of the District of Columbia, by Clifford J. Hynning, managing general partner of said limited partnership, appearing pro se, and moves this Court to quash the return of service of summons on Caravel on the grounds that the defendant Caravel is a limited partnership

under the laws of the District of Columbia; defendant Caravel is not licensed to do business in Virginia and has engaged in no business there; and defendant Caravel, an indispensable party (on the face of the complaint and its exhibits), has not been properly served with process in this action, all of which more clearly appears from the affidavit of Clifford J. Hynning (hereinafter called "Hynning"), managing general partner of Caravel, as filed in the United States District Court for the Eastern District of Virginia in Civil Action No. 75-855-A, a copy of which is annexed hereto as defendant's Exhibit I.

CLIFFORD J. HYNNING, pro se, as
Managing General Partner of
CARAVEL OFFICE BUILDING COMPANY, A District of Columbia limited partnership,
Suite 301,
1555 Connecticut Avenue, N.W.
Washington, D.C. 20036
Telephone No: 232-0775

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of March, 1976, a copy of the above Motion to Quash, and the attached Defendants' Plea in Abatement and Answer was hand-delivered, to Griffin T. Garnett, III, Esq., Garnett and Kostik, 2000 North 16th Street, Arlington, Va. 22216

Clifford J. Hynning

* * *

DEFENDANT'S EXHIBIT: AFFIDAVIT

CLIFFORD J. HYNNING, being duly sworn, deposes and says:

1. I am a member of the bar of the District of Columbia, with law offices at 1555 Connecticutt Ave., NW, Washington, D. C.,; and I am also the managing general partner of Caravel Office Building Company (hereinafter called "Caravel").

2. Caravel is a limited partnership organized under the laws of the District of Columbia, with its business offices at 1555 Connecticut Ave., NW., Washington, D. C. Caravel's sole business consists of the ownership and management of an office building located at 1601 Connecticut Ave., NW, Washington, D. C. Caravel is not licensed to do any business except in the District of Columbia; nor does Caravel engage in business anywhere except in the District of Columbia.

3. All the records of Caravel are maintained and physically located at the partnership offices at 1601 Connecticut Ave., NW, Washington, D. C.

4. The parties to the transaction giving rise to this claim made an explicit choice-of-law provision (Plaintiff's Exhibit "A") as follows:

> "This Promissory Note has been delivered in the District of Columbia by a limited partnership organized and doing business in the District of Columbia, is secured by real property located in the District of Columbia, and is governed by the laws of the District of Columbia."

5. As appears from the above, this claim will be determined by the statutes and court decisions of the District

of Columbia. The United States District Court for the Eastern District of Virginia is not accustomed to trying cases exclusively governed by the laws of the District of Columbia, as are the federal courts sitting in the District of Columbia.

6. There will be no substantial harm or hardship to plaintiff in relegating it to its remedy before the United. States District Court for the District of Columbia, the district where all of the acts and transactions complained of took place. The granting of the motion to transfer venue will in no way deprive plaintiff of its day in court.

/s/ Clifford J. Hynning
Clifford J. Hynning

Dist of Columbia.
Subscribed and sworn to before me this 27th day of December, 1975

/s/ Herman Jacobs
Notary Public
Comm. Exp. 12/14/80

* * *

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

BOGLEY, HARTING, MAHONEY & LEBLING, INC.,
A Maryland Corporation
7000 Wisconsin Avenue,
Chevy Chase, Maryland,
Complainant,

v.

THE CARAVEL OFFICE BUILDING COMPANY,
A District of Columbia partnership,
1555 Connecticut Avenue, N.W.
Washington, D.C. 20036

and

CLIFFORD J. HYNNING,
3700 N. Military Road,
Arlington, Virginia

and

CAROL H. SMITH,
1034 N. Calvert Street,
Baltimore, Maryland
Defendants.

In Chancery No. 26191

PLEA IN ABATEMENT,
or in the Alternative, a Motion to Dismiss

Comes now Clifford J. Hynning, appearing pro se, individually, and as managing general partner of Caravel Office Building Company (hereinafter called "Caravel"), and moves this Court to abate or dismiss the action on the ground that, as appears on the face of the complaint and its supporting Exhibits A and B, it is grounded on a purely local action involving real property located within the District

of Columbia and, by agreement of plaintiff and defendants, is governed exclusively by the laws of the District of Columbia.

As grounds for this motion, defendants submit the following:

(a) The action is based on a note (complaint and plaintiff's exhibit A), which recited on its face the following choice-of-law provision:

> "This Promissory Note has been delivered in the District of Columbia by a limited partnership organized and doing business in the District of Columbia, is secured by real property located in the District of Columbia, and is governed by the laws of the District of Columbia."

and plaintiff's claim did not arise out of, or have any connection with, any business transaction by any defendant in this state and district.

(b) Defendant Caravel is a limited partnership organized under the laws of the District of Columbia; and Caravel's exclusive business consists of the ownership of the Caravel Office Building, title to which is held in the name of the partnership in accord with the specific provision of a District of Columbia statute authorizing a partnership to own real property in the partnership name, and, further, of the management and leasing of said building, and performs no other functions or activities, as more clearly appears from defendants' exhibit 1; and this action could have readily been brought by plaintiff in the United States District Court for the District of Columbia.

(c) All the witnesses and records are readily available in the District of Columbia; and, moreover, defendant Hyn-

ning as a member of the bar of the District of Columbia for several decades, can readily defend this action on behalf of all defendants without being put to the expense of employing counsel resident in Virginia and who are members of the bar of this Court.

(d) Upon the trial of this action it will be necessary to interpret the statutes and court decisions of the District of Columbia.

(e) By denominating its action "In Chancery" plaintiff is clearly relying on the deed of trust annexed to its complaint as plaintiff's exhibit B. By so doing, plaintiff, by definition, has filed a local action involving real property located outside the jurisdiction of this Court. The clear effect of the above, together with the choice of law provision contained on the face of the note, and set forth in para. (a) above, whereby the parties explicitly agreed that this transaction is to be exclusively governed by the laws of the District of Columbia, it follows that the adjudication herein should best be performed by the courts of the District of Columbia. In this connection, it should be noted that the plaintiff has already sought to invoke the diversity jurisdiction of the Eastern District of Virginia in Civil Action Number 75-855-A, dismissed in an order on February 13, 1976, by Judge Bryan.

The Plaintiff has available to it the proper forum of the United States District Court for the District of Columbia, where all the named defendants agree to accept service, at the law offices of Clifford J. Hynning, Suite 301, 1555 Connecticut Avenue, N.W., Washington, D.C. 20036, and have the matter fully adjudicated by such court, applying the law of the District of Columbia, which is the law generally applied by the court to the transactions set forth in the complaint. There would consequently be no substantial

harm or hardship to the plaintiff in relegating it to its remedy before the United States District Court for the District of Columbia, and the district wherein all the acts and transactions complained of took place. The granting of this plea in abatement will in no way deprive the plaintiff of its day in court.

Respectfully submitted

CLIFFORD J. HYNNING pro se, and as counsel for defendants,
Suite 301,
1555 Connecticut Avenue, N.W.
Washington, D.C. 20036
Telephone No. 232-0775

* * *

HARTING, MAHONEY & LEBLING, INC.
Mortgage Bankers
Chevy Chase, Maryland 20015

Defendants Exhibit B6 for Identification
Exhibit D

MEMORANDUM February 12, 1969

To: Harry F. Davies, Jr.
From: Carville J. Cross
Re: Caravel Office Building Loan
Loan Fees Incurred

Set forth below is a breakdown of the loan fees incurred in conjunction with the financing of the Caravel Office Building, 1601 Connecticut Avenue, N.W., Washington, D.C.

Permanent Loan - Sun Life - $922,000 1% fee	$ 9,220.00
Construction Loan - National Savings & Trust - 1% fee	9,220.00
Sale-leaseback - $585,000 2% fee	11,700.00
9	*9,000.00* *HD*
Gap Loan - $100,000-7% fee	7,000.00
TOTAL FEES	$37,140.00
	39,140.00

/s/ Illegible

100M 8% monthly term until 12/31/70.

$100,000 @ 8%, [illegible]12/31/70

EXHIBIT B